

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENNETH A. ROBERTS,

Plaintiff,

v.

DEB MCCULLOCH,

Defendant.

ORDER

11-cv-253-slc

Pursuant to Chapter 980 of the Wisconsin Statutes, plaintiff Kenneth Roberts is a patient at the Sand Ridge Secure Treatment Facility in Mauston, Wisconsin. He alleges that Chapter 980 is unconstitutional and seeks release from custody.

Roberts asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Roberts has given the court, it concludes that he is unable to prepay the full fee for filing this lawsuit. Roberts has made the initial partial payment of \$37.60 required of him under § 1915(b)(1).

Even though Roberts has filed his complaint on a 42 U.S.C. § 1983 form, the relief he requests -- release from custody -- is properly sought in a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (citing *Preiser v. Rodriguez*, 411 U.S. 475 (1973) (stating that a petition for habeas corpus under 28 U.S.C. § 2254 “is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release”). Roberts *may* challenge his confinement under Chapter 980 in petitions for writs of habeas corpus, but only after he exhausts all state court remedies available to him as required by 28 U.S.C. § 2254.

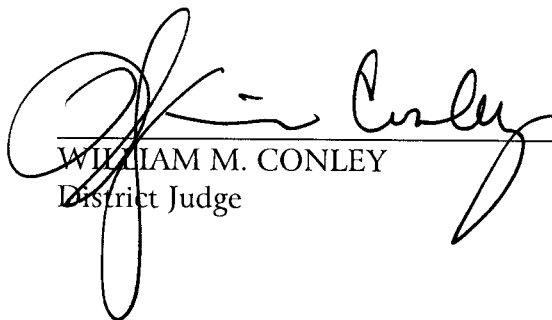
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this 11/1/11
by Debra A. Conley
M. Hardin, Secretary to
Judge William M. Conley

ORDER

IT IS ORDERED that plaintiff Kenneth A. Roberts's complaint is DISMISSED without prejudice to his raising his claim of illegal confinement in a petition for a writ of habeas corpus after he has exhausted his state court remedies.

Entered this 1st day of July, 2011.

BY THE COURT:



WILLIAM M. CONLEY
District Judge